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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Item 11 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 July 1997]

GE.97-13128 (E)

Incitement to genocide as an international crime: Recent case of Iran

1. The 1993 Vienna Declaration and Programme of Action referred to genocide in part I, paragraph 28. The gravity of direct and public incitement to commit the "international crime" of genocide should be addressed by the international community.

2. The Association for World Education welcomes the expanded working paper of Stanislav Chernichenko, entitled "Recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime" (E/CN.4/Sub.2/1997/29) and also the section of the 1996 report (A/51/10) of the International Law Commission entitled "Draft code of crimes against the peace and security of mankind", particularly article 2 ("Individual responsibility"), article 3 ("Punishment"), article 16 ("Crime of aggression") and article 20 ("War crimes").

3. Article III of the Convention on the Prevention and Punishment of the Crime of Genocide states: "The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide". Article IV declares: "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals".

4. Two Reports were prepared by experts of the Sub-Commission on the question of the prevention and punishment of the crime of genocide: the first by Nicodène Ruhashyankiko in 1978 (E/CN.4/Sub.2/1978/416); and the revised 1985 report by Ben Whitaker (E/CN.4/Sub.2/1985/6). (For a recent study, see Yves Ternon, L'Etat criminel. Les Génocides au XXe siècle, Paris: Le Seuil, 1994.)

5. As the Special Rapporteur on the situation of human rights in Rwanda pointed out in his 1995 report to the Commission (E/CN.4/1995/71), the massacres which began on 6 April 1994 fit the definition of genocide: criminal acts "committed with the intent to destroy, in whole or in part, a particular group as such". The Special Rapporteur also stated that the campaign of incitement to exterminate the Tutsis was orchestrated by the public authorities and by the media, mainly Radio-Télévision Libre des Milles Collines. These broadcasts were known to the diplomatic community in Rwanda for months in advance, yet no public protests were made, nor was the matter raised in either the Organization of African Unity or the United Nations. We wish to stress the urgent need to study the role of propaganda and the media in the incitement to racial, ethnic and religious hatred, which can lead to mass killing and genocide.

6. Whereas the right to freedom of expression - upheld by article 19 of the Universal Declaration of Human Rights and by article 19.2 of the International Covenant on Civil and Political Rights - can be limited only in closely defined circumstances, government limitations on "expression" are often self-serving, to avoid investigation and criticism. However, a certain form of "expression" ("hate speech"), which denies the human rights of whole groups of people can lead to mass killing and genocide. Thus, there should be universally agreed upon limits to forms of "expression" that are incitements

to kill. These limits can be based on the principles set out in article 20.3 of the above-mentioned International Covenant. (For an overview of comparative law and practice, see Striking a balance: hate speech, freedom of expression and non-discrimination, London: Art. XIX.)

7. We maintain that there is a natural link between Article III (c) of the 1948 Genocide Convention ("Direct and public incitement to commit genocide") and article 4 (a) of the 1965 Convention on the Elimination of Racial Discrimination: "... incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin ...".

8. On 21 March 1995 (commemoration of the International Day for the Elimination of Racial Discrimination), at a round table discussion on the theme "National and international mobilization against racism and racial discrimination," the following question was put to Mr. Ivan Garvalov: "Does he feel that the mechanism exists for him, as Chairman of the Committee for the Elimination of Racial Discrimination (CERD), to collaborate with the High Commissioner, so as to sound the tocsin loud and clear on every occasion where direct and public incitement to commit genocide is clearly manifested?"

9. Mr. Garvalov replied: "I have just indicated a connection between the Genocide Convention and the Convention for the Elimination of Racial Discrimination. There is indeed a mechanism for CERD to act immediately under article 4 of its Convention in regard to any mass media appeals and other incitements to racial discrimination and violence leading to genocide. At its August session CERD will take up this important issue, subsequent to my forthcoming meetings with the High Commissioner." Since then, this link between the two Conventions is under discussion and awaits full implementation.

10. Incitements to genocide should be monitored regularly. We provide below information about a recent Iranian case that merits the attention and action of the Sub-Commission at the current session.

11. The British Broadcasting Corporation's Summary of World Broadcasts (SWB) reproduced excerpts from the 4 July Friday sermon delivered by Ayatollah Muhammad Yazdi, the head of the Iranian judiciary, in Tehran University. He called for Israel to be "eliminated" because of an insulting poster shown in Hebron by a young Israeli woman. He declared that the death sentence was mandatory for an individual who insulted Islam and that the same sentence must also be applied to a country, regardless of whether the insult came from an individual. (His words were broadcast the same day on Tehran's Voice of the Islamic Republic of Iran, in Persian at 10.30 GMT.)

> "You are aware of the impertinence and the insult committed by the Zionists against the sacred name and honour of the prophet of Islam. The world of Islam is deeply worried and upset by this action. You have heard the fatwas and views of all the Shi'i authorities [Persian: maraje] in the Qom seminary. You have heard the fatwa issued by the Shaykh of Al-Azhar in Egypt, the death sentence he has issued. You are witnessing the steps that have been taken in different Islamic countries and by Muslims. This state of [issuing] condemnations, [saying] it was

> an ugly deed and so on and so forth must be left behind. These reactions must be left behind. Today, you can see for yourself that both Sunni and Shi'i ulema [theologians] are saying: The sentence for the one who has done this is death. I am saying this: Is there a difference between a natural person and a corporate body? If a corporate body commits this deed, the sentence is the same. The result is this - which is what people say, quoting the Imam [Khomeini] or is said by others, or chanted in slogans by you: Israel must be eliminated because it has acted against Islam and against the Prophet of Islam. [Crowd chants: God is Great! Death to Israel! Death to America!] [Source: BBC: ME/2964 MED/12-13 (39), in SWB, 7 July 1997]

12. In an earlier statement, on 2 July, a leading Ayatollah in Qom, Fazel Lankerani, "called on the Islamic ummah to destroy Israel through unity and solidarity. He further called on the people from all walks of life not to remain silent to these shameful moves and not to hesitate from taking any action to destroy the occupying regime." [Source: IRNA news agency, Tehran, in English, 09.09 GMT, 3 July 1997. BBC: ME/2963 MED/9 (34), in SWB, 5 July 1997]

13. In his 4 July Friday sermon in Qom (on Iranian television the next day), Ayatollah Ali Meshkini, Speaker of the Assembly of Experts, declared:

> "I believe that for this great tragedy, all the presidents of Islamic countries, the prime ministers, the kings of Islamic countries, all the newspapers, all the magazines, all the televisions and all the radios should begin a massive attack against Israel and the United States, and endanger the people of Israel, the Israeli diplomats and those of the United States, and the Israeli embassies and all the Israeli interests everywhere in the world. All Islamic countries should overflow, God willing, with the chants of 'death to America' and 'death to Israel'. All Islamic judges, the judges of all Islamic countries should politely and rationally attack this incident, and they should condemn it. The judges should inform each other and should be in close contact with the United Nations and the [International] Court at The Hague ..." [Source: Vision of the Islamic Republic of Iran Network I (TV), Tehran, in Persian, 12.35 GMT, 5 July 1997. BBC: ME/2964 MED/14 (40), in SWB, 7 July 1997].

14. Iran ratified the Genocide Convention and the International Convention on the Elimination of All Forms of Racial Discrimination by it. As neither of them have since been denounced by it, the Islamic Republic of Iran remains a Contracting Party. Therefore, both articles III and IV of the former, and article 4 (a) of the latter should be invoked in relation to these media calls for genocide and mass killing by the head of the Iranian judiciary (Ayatollah Muhammad Yazdi), the Speaker of the Assembly of Experts (Ayatollah Ali Meshkini), and other public officials who made such appeals. When public incitement to genocide and politicide are made by government officials and religious authorities - and relayed on national radio and television - the international community should not remain indifferent as in the past, but should invoke these Conventions in order to condemn and, where possible, to punish the offenders.

15. In this specific Iranian case of "direct and public incitement to commit genocide", the Association for World Education calls upon:

The Commission and the Sub-Commission: to express in their resolutions on the Islamic Republic of Iran, or otherwise, a strong condemnation of these direct and public incitements by public officials to commit acts of violence and genocide;

CERD: to invoke article 4 (a) of its Convention - as well as article III (c) and article IV of the Genocide Convention - and take the appropriate action at its forthcoming session;

All, and any, of the State Parties to the Convention on the Prevention and Punishment of the Crime of Genocide: to "call upon the competent organs of the United Nations to take such action under the Charter ... as they consider appropriate" (art. VIII).

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Sub-Commission on Prevention of
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Forty-ninth session
Item 4 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement by the American Association of Jurists, a non-governmental organization in special consultative status, and Centre Europe-Tiers Monde, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 July 1997]

1. In accordance with the Sub-Commission's mandate to undertake a study on the question of impunity in violations of economic, social and cultural rights, the American Association of Jurists (AAJ) and the Centre Europe-Tiers Monde (CETIM) organized two seminars. One was held in November 1996 at the United Nations Office in Geneva and the other in April 1997 at the Universidad Carlos III in Madrid. The latter enjoyed the active participation and valuable assistance of two of the university's institutes, Bartolomé de las Casas and Francisco de Vitoria.

2. The seminars were attended by university professors from Argentina, Canada, Chile, Italy and Spain, and, in a personal capacity, by officials of the United Nations Centre for Human Rights, the United Nations Conference on Trade and Development and the International Labour Organization and by a member of the United Nations Committee on Economic, Social and Cultural Rights. The Centre for Human Rights was officially represented by a staff member at the Madrid seminar. The Special Rapporteur for the question, Mr. El-Hadj Guissé, was invited to and participated in both seminars.

3. The seminars had before them a 40-page working paper prepared by the organizers, which was available in Spanish and in French.

4. The seminars adopted a broad approach to the theme, analysing not only punitive aspects but also preventive aspects of violations of economic, social and cultural rights. The debate extended to declarations of principles, draft codes of conduct, the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights prepared by the Committee, and especially the question of sanctions and redress for such violations. At the Madrid seminar in particular, the participation of professors of public international law and criminal law ensured a fruitful interdisciplinary exchange.

5. Reports on both seminars are available in Spanish, with summaries in French.

6. In the light of the discussions and work of the AAJ and the CETIM in recent years, of statements and debates on the occasion of seminars and subsequent reflections, and with a view to taking concrete steps to achieve a real balance between the defence and promotion of civil and political rights and those of economic, social and cultural rights, the AAJ and the CETIM suggest that the Sub-Commission, in conclusion of the question of impunity in the violation of economic, social and cultural rights, adopt the following suggestions and recommendations:

(a) That control and follow-up mechanisms for the implementation of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, approved by the ILO Governing Body in 1977, should be reactivated in the ILO;

(b) That consultations should be restarted with a view to establishing codes of conduct on the transfer of technology and on multinational enterprises;

(c) That a declaration of principles on human rights and the environment should be promoted (see the draft contained in the final report by Mrs. Ksentini, E/CN.4/Sub.2/1994/9);

(d) That the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices should be applied and eventually improved;

(e) That follow-up mechanisms should be created for the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191) and the International Code of Conduct for Public Officials (General Assembly resolution 51/59), for example, regular publication of the list of private or public enterprises guilty of acts of corruption;

(f) That international judicial cooperation should be promoted (with precedence over banking secrecy, as decided recently by the Federal Court of the Helvetic Confederation (Case 1A.33/1997 of 8 April 1997));

(g) That the establishment of State and investor control over financial activities should be promoted, particularly with regard to the management of pension funds (in the latter case with the participation of the trade unions concerned);

(h) That studies should be continued on appropriate indicators to measure progress achieved with the gradual implementation of economic, social and cultural rights, until such indicators have been established;

(i) That the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights should be approved, subject to relevant amendments;

(j) That the Committee on Economic, Social and Cultural Rights should be encouraged to prepare general comments on each of the rights contained in the Covenant, along the lines of General Comment 4 on the right to adequate housing;

(k) That it should be suggested that the Commission on Human Rights appoint a rapporteur (as proposed by the Committee on Economic, Social and Cultural Rights) or a working group, to deal with violations of economic, social and cultural rights;

(l) That a General Assembly declaration should be sought, stating that large-scale violations of economic, social and cultural rights and the abuse of economic power and international financial mechanisms to obtain disproportionate concessions, advantages or profit to the serious detriment of groups or communities (such as women, children, disabled persons, workers, consumers, populations, minorities or indigenous peoples) constitute international crimes. (See General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted under resolution 40/34), in particular articles 18 and 21 of the Declaration in section B);

(m) That a subsection should be added to article 18 of the Draft Code of Offences against the Peace and Security of Mankind, prepared by the United Nations International Law Commission, along the lines of the declaration proposed for the General Assembly in paragraph (l) above;

(n) That the draft statute for an international criminal court, prepared by the International Law Commission, should make provision for a division specializing in this type of offence;

(o) That the enforcement of national laws and regulations consistent with existing and proposed international norms in this field should be encouraged.